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In the Supreme Court of the United States

OCTOBER TERM, 1976

HEUBLEIN, INC., AND UNITED VINTNERS, INC., PETITIONERS

v.

LAUREL WATERS AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 547 F. 2d 466. The decision of the district court (Pet. App. B) is not officially reported.

JURISDICTION

The judgment of the court of appeals was entered on November 12, 1976. A petition for rehearing *en banc* was denied on January 14, 1977. On April 15, 1977, Mr. Justice Rehnquist extended the time for filing a petition for a writ of certiorari to and including April 18, 1977. The petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a white employee who suffers the loss of interracial associations due to unlawful discrimination against blacks and ethnic minorities is a person "aggrieved" within the meaning of Title VII of the Civil Rights Act of 1964.

STATUTES INVOLVED

Section 706(b) of Title VII of the Civil Rights Act of 1964, 78 Stat. 259, as amended, 42 U.S.C. (Supp. V) 2000e-5(b), provides in pertinent part:

> Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer * * * has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge * * * within ten days, and shall make an investigation thereof. * * * If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. * * * If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. * * *

Section 706(f)(1) of Title VII, 78 Stat. 260, as amended, 42 U.S.C. (Supp. V) 2000e-5(f)(1), provides in pertinent part:

> * * * If a charge filed with the Commission pursuant to subsection (b) is dismissed by the Commission, or if within one hundred and eighty days from the filing of

> such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section * * * or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission * * * shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. * * *

STATEMENT

On June 18, 1970, Laurel Waters, a white female, filed a charge with the Equal Employment Opportunity Commission against her employer United Vintners, Inc., alleging that the company discriminated against her and other women employees in job assignments, promotion and compensation. The charge further alleged that "the same is true of Negroes—they are discriminated against in the same way, as are other minority groups" (Pet. App. A-3).

On July 4, 1973, after the Commission notified Waters of her right to file suit, she initiated this action against United Vintners, Inc., and its parent corporation Heublein, Inc. (petitioners) in the United States District Court for the Northern District of California alleging that petitioners violated Title VII of the Civil Rights Act of 1964 by discriminating on the bases of sex, race, and national origin (Pet. App. A-2). Waters brought the action on behalf of herself and all other females, blacks and minorities subjected to discrimination by petitioners; however, on petitioners' motion, the district court dismissed those portions of the complaint alleging discrimination against blacks and ethnic minorities.

On December 7, 1973, Waters filed an amended complaint again alleging that petitioners discriminated on the bases of sex, race and national origin in violation of Title VII and specifically that all women, blacks and ethnic minorities were either totally excluded from employment with petitioners or were confined to lowpaying, low-status, non-managerial jobs. As summarized by the district court, the amended complaint further alleged that "women and racial and ethnic minorities * * * suffer certain economic, social and psychological injuries because they work in an environment which is not free from discrimination" (Pet. App. B-3).[1]

On petitioners' motion, the district court again dismissed the claims of discrimination on the bases of race and national origin, ruling that with respect to those claims, Waters did not have standing because she was not the direct object of racial and ethnic discrimination (Pet. App. B-4 to B-6).

On an interlocutory appeal by Waters and the Equal Employment Opportunity Commission, the court of appeals reversed, finding the issue controlled by this Court's ruling in *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (Pet. App. A-1 to A-13). The court of appeals held that Waters has standing as a "person claiming to be aggrieved" by discrimination against blacks and ethnic minorities within the meaning of Section 706(b) and 706(f)(1) of Title VII (Pet. App. A-7 to A-12). The court noted, however, that its decision encompassed only the question of standing and that it did not decide whether Waters was an

[1]The Equal Employment Opportunity Commission was granted permission to intervene in the action on the condition that its claims be limited to those maintained by Waters (Pet. 4).

adequate representative of the class of blacks and Spanish-surnamed Americans who may have been subjected to discrimination (Pet. App. A-11 to A-12).

ARGUMENT

The court below properly held that the issue in this case—the standing of a white female to challenge discrimination against blacks and minorities that affects her working environment—is controlled by this Court's decision in *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205.

In *Trafficante*, the Court, in a unanimous decision, held that white tenants who alleged the loss of benefits from interracial associations as a result of discriminatory housing practices directed against non-whites were "persons aggrieved" within the meaning of Section 810 of Title VIII of the Civil Rights Act of 1968, 82 Stat. 85, 42 U.S.C. 3610. Emphasizing the legislative choice of the broad and inclusive "person aggrieved" language and the important role of private actions in the enforcement of the Civil Rights Act of 1968, the Court concluded that injuries caused by living in a segregated environment were sufficient to confer standing to litigate violations of the Act. 409 U.S. at 209.[2] The same considerations apply here where Congress has also provided a statutory cause of action for any "person claiming to be aggrieved" (42 U.S.C. (Supp. V) 2000e-5(f)(1)), and where "the purpose and structure of [the Act] is 'functionally identical' to the fair housing legislation construed in *Trafficante*" (Pet. App. A-7 to A-8).

[2]In *Trafficante*, the Court relied upon and quoted with approval the Third Circuit's opinion in a Title VII case, which stated that Congress, in allowing a suit under Title VII by any "person claiming to be aggrieved," indicated its "intention to define standing as broadly as is permitted by Article III of the Constitution." 409 U.S. at 209, quoting *Hackett* v. *McGuire Brothers, Inc.*, 445 F. 2d 442, 446 (C.A. 3).

Petitioners argue that Title VII is aimed only at the employment opportunities of those who have been subjected to discrimination (Pet. 11-17). But, as the court below recognized (Pet. App. A-8 to A-9), the adverse effects of working in an environment in which members of minority groups are excluded or otherwise subjected to discrimination are no less injurious than the losses suffered from living in such a segregated environment. As the court explained (*ibid.*):

> [I]nterpersonal contacts—between members of the same or different races—are no less a part of the work environment than of the home environment. Indeed, in modern America, a person is as likely, and often more likely, to know his fellow workers than the tenants next door or down the hall. The possibilities of advantageous personal, professional or business contacts are certainly as great at work as at home. The benefits of interracial harmony are as great in either locale. The distinction between laws aimed at desegregation and laws aimed at equal opportunity is illusory.

Moreover, the congressional supporters of Title VII recognized that its effects would extend beyond the individuals who are the direct objects of discriminatory practices.[3] Petitioners cite no legislative history, and we have found none, indicating that Congress intended to confer a narrower right of action in Title VII cases than has been recognized under Title VIII.[4]

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[3]H. R. Rep. No. 914, 88th Cong., 1st Sess., Pt. 2, pp. 26-30 (1963) (additional views of Reps. McCulloch, Lindsay, Cahill, Shriver, MacGregor, Mathias and Bromwell).

[4]Just as in *Trafficante, supra,* the "consistent administrative construction of the Act" (409 U.S. at 210), indicates that Title VII confers standing to those aggrieved by the loss of benefits from interracial association as a result of discrimination (Pet. App. A-10). See EEOC Decision No. 72-0591 (1971), CCH EEOC Decisions (1973) para. 6314, 4 FEP Cases 309; EEOC Decision No. 70-09 (1969), CCH EEOC Decisions (1973) para. 6026.

In *Abermarle Paper Co.* v. *Moody,* 422 U.S. 405, 416, this Court noted that Title VII is "directed at a historic evil of national proportions." The important role of private actions in enforcing Title VII was recognized in *Alexander* v. *Gardner-Denver Co.,* 415 U.S. 36, 45 (citations omitted), where the Court stated:

> [T]he private right of action remains an essential means of obtaining judicial enforcement of Title VII. * * * In such cases, the private litigant not only redresses his own injury but also vindicates the important congressional policy against discriminatory employment practices.

The courts of appeals have, in general, adopted a broad view of standing in Title VII litigation,[5] and the decision below is in accord with *Gray* v. *Greyhound Lines, East,* 545 F. 2d 169, 175-176 (C.A. D.C.), the only other court of appeals decision of which we are aware that addresses the question whether the employees' interest in working under non-discriminatory conditions is sufficient to support a challenge to unlawful employment practices directed at others. There the court specifically held that the adverse

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[5]See, *e.g., Hackett* v. *McGuire Brothers, Inc., supra,* 445 F. 2d at 445 (footnote omitted), stating that "[a]n aggrieved person obviously is any person aggrieved by any of the forbidden practices." See also *Gray* v. *Greyhound Lines, East, supra; Local 194, Retail, Wholesale and Department Store Union* v. *Standard Brands, Inc.,* 540 F. 2d 864, 866 (C.A. 7); *Senter* v. *General Motors Corp.,* 532 F. 2d 511, 517 (C.A. 6), certiorari denied, 429 U.S. 870; *Graniteville Co.* v. *Equal Employment Opportunity Commission,* 438 F. 2d 32, 36-37 (C.A. 4); *Carr* v. *Conoco Plastics, Inc.,* 423 F. 2d 57, 65 (C.A. 5), certiorari denied, 400 U.S. 951.

psychological effects of working in an "atmosphere of discrimination" were sufficient to give a black employee standing under Title VII to challenge hiring discrimination directed against other blacks, although he himself had not been discriminated against in hiring. 545 F. 2d at 176.[6]

Finally, there is no support for petitioners' contention that the effect of the decision below will be to overburden the courts and to complicate litigation under Title VII (Pet. 17-20). In cases like this where virtually identical policies are allegedly applied to women and minorities, the proof as to all groups will involve some of the same evidence, the relief questions will be similar, and the presence of all injured classes before the court will simplify the resolution of conflicting interests.[7] Litigating claims of race, sex and national origin discrimination in one suit, rather than

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[6]It is of course established that Congress by statute may confer standing upon persons who meet the Article III requirement, but who would otherwise be barred by the Court's prudential standing limitations. Such persons may assert the rights of third parties or "invoke the general public interest in support of their claim." *Warth* v. *Seldin*, 422 U.S. 490, 501. Moreover, "Congress may enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute." *Linda R. S.* v. *Richard D.*, 410 U.S. 614, 617 n. 3.

[7]Trials in such cases are no more complex or lengthy than in cases where the Equal Employment Opportunity Commission is the plaintiff or where private plaintiffs make an "across-the-board" attack on an employers' practices, including practices which may never have been applied to them. See *e.g.*, *Rich* v. *Martin Marietta Corp.*, 522 F. 2d 333, 340-341 (C.A. 10); *Barnett* v. *W. T. Grant Co.*, 518 F. 2d 543, 547-548 (C.A. 4); *Long* v. *Sapp*, 502 F. 2d 34, 42-43 (C.A. 5); *Reed* v. *Arlington Hotel Co., Inc.*, 476 F. 2d 721, 723 (C.A. 8), certiorari denied, 414 U.S. 854.

several suits, is an efficient use of judicial resources that is likely to lessen rather than increase any burden on the courts.[8]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[8]Of course, as noted earlier (*supra*, pp. 4-5), the court of appeals did not decide whether Waters was an adequate representative of the class of black and Spanish-surnamed Americans who may have been subjected to discrimination. Cf. *East Texas Motor Freight System, Inc.* v. *Rodriguez*, No. 75-718, decided May 31, 1977. Thus, while Waters' capacity to seek back pay and other relief on behalf of that class remains to be determined, the decision below upholding her standing at least entitles her to seek injunctive relief against alleged discriminatory practices affecting her work environment.